U.S. Department of Justice

Immigration and Naturalization Service

C

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami Date: MAR - 7 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

FOR Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States because he falls within the purview of section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

In response to the notice of certification, the applicant requests that the Service re-check his case. He states that he traveled to Cuba for medical reasons and the Service took from him all his documents and he has not been able to get a legal job. The applicant submits a copy of his conviction record.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or ....
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On March 4, 1991, in the Circuit Court of the Eleventh [redacted] Case No. [redacted] the

applicant was adjudged guilty of Counts 1, 2, and 3, grand theft third degree. He was placed on probation with special condition that he makes restitution in the amount of $10,000 to the victims. Because the applicant violated the terms of his probation, on June 19, 1998, his probation was revoked and he was sentenced to imprisonment for a term of 9 months as to Counts 1, 2, and 3 concurrently, and coterminous with Case No. [redacted]. This case, however, is not reflected in the record.

2. On April 5, 1984, in Circuit Court of the Seventeenth [redacted] Case No. [redacted], the applicant was adjudged guilty of Count 1, burglary; Count 2, burglary, and Count 3, resisting arrest without violence. He was sentenced to imprisonment for a period of one year as to each count concurrently.

3. The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, shows that on November 19, 1996, in [redacted], the applicant was arrested and charged with carrying concealed weapon-knife. The final disposition of this arrest, however, is not contained in the record.

4. The FBI report shows that on December 19, 1990, in [redacted] the applicant was arrested and charged with Count 1, burglary-unoccupied; Count 2, grand larceny; Count 3, possession of burglary tools; Count 4, burglary; and Count 5, damage property/criminal mischief. The final disposition of this arrest is not contained in the record.

5. The FBI report shows that on July 24, 1990, in [redacted], the applicant was arrested and charged with Count 1, burglary/business-unoccupied; Count 2, grand larceny; Count 3, damage property/criminal mischief; Count 4, burglary; and Count 5, possession of burglary tools. The final disposition of this arrest is not contained in the record.

6. The FBI report shows that on August 4, 1982, [redacted] the applicant was arrested and charged with Count 1, possession of dangerous drugs (marijuana); and Count 2, possession of marijuana. The report shows that on January 11, 1983, the applicant was convicted of Count 1 and assessed $25 fine and court costs. The final disposition as to Count 2 is not reflected in the record.

7. The FBI report shows that on June 24, 1982, in [redacted] the applicant was arrested and charged with Count 1, possession of marijuana; Count 2, trafficking in marijuana; and Count 3, resisting arrest without violence. The report shows that on September 13, 1982, the applicant was convicted of Counts 1 and 3, adjudication of guilt was withheld,

and he was placed on probation for a period of 2 years and placed on community control as to each count. The final disposition as to Count 2 is not reflected in the record.

Grand theft is a crime involving moral turpitude (paragraph 1 above). Matter of Chen, 10 I&N Dec. 671 (BIA 1964); Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974). Likewise burglary (with intent to commit theft) is a crime involving moral turpitude (paragraph 2 above). See Matter of M-, 2 I&N Dec. 721 (BIA 1982); Matter of Leyva, 16 I&N Dec. 118 (BIA 1977); Matter of Frentescu, 18 I&N Dec. 244, 245 (BIA 1982). The indictment report in paragraph 2 above shows the applicant did unlawfully enter or remain in a structure without the consent of the owner or custodian, having an intent to commit theft.

The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his convictions of crimes involving moral turpitude.

Based on the FBI report, it appears the applicant is also inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his convictions of possession of marijuana (paragraphs 6 and 7 above). The record of proceeding, however, does not contain the court's conviction records of these charges. Such documents are necessary before a determination is made on the inadmissibility of the applicant under section 212(a)(2)(A)(i)(II) of the Act.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.